

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

HORACE GRELY DEAN,

Petitioner,

v.

UNITED STATES,

Respondent.

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Case No. 6:20-CV-202-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Horace Grely Dean, an inmate proceeding *pro se*, filed the above-styled and numbered petition for writ of habeas corpus. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On May 28, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 7), recommending that the petition be dismissed without prejudice because Petitioner's section 2255 motion is not ripe for consideration on the merits. *Id.* at 3. Petitioner filed objections on June 15, 2020. Docket No. 9.

The Court overrules Petitioner's objections. Petitioner states only that the Magistrate Judge is biased against his case. *Id.* at 1–2. Petitioner does not dispute the Magistrate Judge's proper conclusion that his section 2255 motion is premature because of the pending appeal of his criminal conviction. *See, e.g., Fassler v. United States*, 858 F.2d 1016, 1019 (5th Cir. 1988) (“We have held that a criminal defendant may not collaterally attack his conviction until it has been affirmed on direct appeal.”).

This Court has conducted a careful *de novo* review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1) (the district judge shall “make


a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Having made a *de novo* review of the objections raised by Petitioner to the Magistrate Judge’s Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner’s objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 7) be **ADOPTED**. It is further

ORDERED that the Government’s Motion to Dismiss Section 2255 Motion (Docket No. 6) is **GRANTED**. It is further

ORDERED that the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED WITHOUT PREJUDICE** to Petitioner’s ability to file a proper section 2255 motion, if necessary, after the Fifth Circuit decides his appeal. A certificate of appealability is **DENIED**.

So **ORDERED** and **SIGNED** this **18th** day of **June, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE